

JUDGE SAND

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FIREMAN'S FUND INSURANCE CO., as
subrogee of KHOURY, INC.,

Plaintiff,

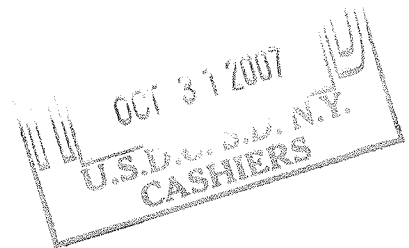
- against -

JAPAN AIRLINES INTERNATIONAL
COMPANY, LTD.,

Defendant.

Case No.:

NOTICE OF REMOVAL



Pursuant to 28 U.S.C. §§1331, 1441 and 1446, defendant JAPAN AIRLINES INTERNATIONAL COMPANY, LTD. ("JAL"), by and through its attorneys Clyde & Co US LLP, files its Notice of Removal to this Court of an action pending against it in the Civil Court of the City of New York, County of New York. Removal is based on the following grounds:

1. This action was commenced against JAL in the Civil Court of the City of New York, County of New York, by filing of a Summons and Endorsed Complaint ("Summons and Complaint") on or about September 28, 2007. The Summons and Complaint was served on JAL on October 15, 2007. A copy of the Summons and Complaint is annexed hereto as Exhibit "A." No further proceedings have been held in this action.

2. The Summons and Complaint seeks to recover for alleged damage and/or loss to a shipment of goods transported by JAL from Ho Chi Minh City, Vietnam to Las Vegas, Nevada pursuant to JAL air waybill no. 131-8120-8002 dated June 10, 2006.

3. This Court has original jurisdiction based on the existence of a federal question pursuant to 28 U.S.C. §1331. The transportation out of which the subject matter of this action arose was "international carriage" within the meaning of a treaty of the United States known as

the Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded at Warsaw, Poland, on October 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (1934), reprinted in 49 U.S.C.A. § 40105 (1997) (note) as amended by the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw 12 October 1929, 478 U.N.T.S. 371, ICAO Doc. 7686-LC/140 (signed at The Hague, 28 September 1955 and entered into force 1 August 1963) (“Warsaw Convention”), and the rights of the parties are governed exclusively by the provisions of the said Warsaw Convention.

4. Because the carriage involved was “international” as defined in Article 1 of the Montreal Convention, the Convention exclusively governs the rights and liabilities of the parties to this action. *See El Al Israel Airlines, Ltd. v. Tseng*, 25 U.S. 155 (1999); *Commercial Union Ins. Co. v. Alitalia Airlines, S.p.A.*, 347 F.3d 448, 456-57 (2d Cir. 2003). Accordingly, the underlying action may be removed to this Court pursuant to the provisions of 28 U.S.C. §1331 as the action arises under a treaty of the United States, the Warsaw Convention.

5. This Notice of Removal is being filed within 30 days of service of the Complaint by plaintiff.


6. JAL, therefore, is entitled to remove this action to this Court pursuant to 28 U.S.C. §§1332, 1441(b) and (d), and 1446.

7. Concurrently with the filing of this Notice, JAL is giving notice of removal to plaintiff, and is filing a copy of this Notice with the Clerk of Court of the Supreme Court of the State of New York, County of New York. A copy of the Notice of Filing Notice of Removal is attached hereto as Exhibit “B.”

WHEREFORE, defendant JAPAN AIRLINES INTERNATIONAL COMPANY, LTD.
respectfully requests that this action be removed to this Court.

Dated: New York, New York
October 31, 2007

CLYDE & CO US LLP

By: 

Andrew J. Harakas (AH 3515)
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 710-3900

Attorneys for Defendant
JAPAN AIRLINES INTERNATIONAL
COMPANY, LTD.

To: Alfred J. Will, Esq.
Badiak & Will, LLP
106 Third Street
Mineola, New York 11501-4404
(516) 877-2225

EXHIBIT A



CIVIL COURT OF THE CITY OF NEW YORK,
COUNTY OF NEW YORK

FIREMAN'S FUND INSURANCE CO., as subrogee of
KHOURY, INC.,

against

JAPAN AIRLINES INTERNATIONAL COMPANY, LTD.

Plaintiff(s)

Defendant(s)

Index No.

54133

Summons

SEP 28 2007

Plaintiff's Residence

Address: One Chase Manhattan Plaza
37th Floor
New York, New York 10005

The basis of the venue designated is:

Plaintiff's Place of Business

To the above named defendant(s)

You are hereby summoned to appear in the Civil Court of the City of New
York, County of New York at the office of the said court at 111 Centre Street

in the County of New York City and State of New York, within the time provided by law
as noted below and to file your answer to the—endorsed summons—~~annexed complaint~~ with the
Clerk: upon your failure to answer, judgment will be taken against you for the sum of \$ 2,389.55
with interest thereon from 12th of June, 2006 ~~XXX~~ together with the costs of this action.

Dated, September 24, 2007

BADIAK & WILL, LLP
Attorney(s) for Plaintiff

Defendant's Address:

Attn: Manager, Legal Insurance & Taxation
300 Continental Boulevard, Suite 620
El Segundo, California 90245

Post Office Address and Telephone Number
106 Third Street
Mineola, New York 11501-4404
(516) 877-2225

NOTE: The law provides that: (a) If this summons is served by its delivery to you personally within the City of
New York, you must appear and answer within TWENTY days after such service; or
(b) If this summons is served by delivery to any person other than you personally, or is served outside the
City of New York, or by publication, or by any means other than personal delivery to you within the City of New
York, you are allowed THIRTY days after proof of service thereof is filed with the Clerk of this Court within
which to appear and answer.

*If the cause of action is for money only and a formal complaint is not attached to the summons, strike the words "annexed
complaint". If a formal complaint is attached to the summons, strike the words "endorsed summons".

ENDORSED COMPLAINT

A statement of the nature and substance of the plaintiff's cause of action is as follows:

Action to recover damages for breach of contract, breach of bailment and negligence by
defendant air common carrier and freight forwarder, in connection with the shipment of
furniture, moving from Ho Chi Minh City, Vietnam to Las Vegas, Nevada on board
defendant's airplane per Air Waybill 131-8120-8002, dated 6/10/2006, whereby said
shipment sustained damage and loss while in the care, custody and control of said
defendant, its agents or servants. Plaintiff was in no way contributorily negligent.
Plaintiff brings this action in its own right, and on behalf of all interested parties
who may appear.

Amount: \$2,389.55, plus interest and costs.

BADIAK & WILL, LLP
07-H-256-AW

BADIAK & WILL, LLP
Attorney(s) for Plaintiff(s)
07-H-256-AW

That on _____ at _____ M., at _____
deponent served the within summons, and complaint on _____ defendant therein named,
by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person described as
said defendant therein.
1. ☐ INDIVIDUAL
2. ☐ CORPORATION a _____ corporation, by delivering thereat a true copy of each to
personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and
knew said individual to be _____ thereof.
3. ☐ SUITABLE AGE PERSON by delivering thereat a true copy of each to _____ a person of suitable age
and discretion. Said premises is defendant's—actual place of business—dwelling place—usual place of abode—within the state.
4. ☐ AFFIXING TO DOOR, ETC. by affixing a true copy of each to the door of said premises, which is defendant's—actual place of business—dwelling place—
usual place of abode—within the state. Deponent was unable, with due diligence to find defendant or a person of suitable age
and discretion thereat, having called there

MAILING TO RESIDENCE USE WITH 3 OR 4 5A. ☐
MAILING TO BUSINESS USE WITH 3 OR 4 5B. ☐
DESCRIPTION USE WITH 1, 2, OR 3 ☐
Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to
defendant at defendant's last known residence, at _____ and deposited
said envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.
Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class postpaid envelope properly
addressed to defendant at defendant's actual place of business, at _____
in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.
The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address
or otherwise, that the communication was from an attorney or concerned an action against the defendant.
☐ Male ☐ White Skin ☐ Black Hair ☐ White Hair ☐ 14-20 Yrs. ☐ Under 5' ☐ Under 100 Lbs.
☐ Female ☐ Black Skin ☐ Brown Hair ☐ Balding ☐ 21-35 Yrs. ☐ 5'0"-5'3" ☐ 100-130 Lbs..
☐ Yellow Skin ☐ Blonde Hair ☐ Mustache ☐ 36-50 Yrs. ☐ 5'4"-5'8" ☐ 131-160 Lbs.
☐ Brown Skin ☐ Gray Hair ☐ Beard ☐ 51-65 Yrs. ☐ 5'9"-6'0" ☐ 161-200 Lbs.
☐ Red Skin ☐ Red Hair ☐ Glasses ☐ Over 65 Yrs. ☐ Over 6' ☐ Over 200 Lbs.

Other identifying features:

Sworn to before me on

19

Print name beneath signature.

LICENSE NO. _____

Index No. **200710050**
Civil Court of the City of New York
County of New York

FIREMAN'S FUND INSURANCE CO., as subrogee of
KHOURY, INC.,

Plaintiff(s)

against

JAPAN AIRLINES INTERNATIONAL COMPANY,

Defendant(s)

Summons

Action not based
upon a Consumer Credit Transaction

BADIAK & WILL, LLP

Attorney(s) for Plaintiff(s)

Post Office Address

106 Third Street, Suite
Mineola, New York 11501-4404
(516) 877-2225

200710050

EXHIBIT B

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-----X
FIREMAN'S FUND INSURANCE CO., as
subrogee of KHOURY, INC.,

Plaintiff,

- against -

JAPAN AIRLINES INTERNATIONAL
COMPANY, LTD.,

Defendant.
-----X

: Index No.: 54133/07

: **NOTICE OF FILING**
: **NOTICE OF REMOVAL**
:

S I R S:

PLEASE TAKE NOTICE that a Notice of Removal, a copy of which is attached hereto as Exhibit "A," has been filed by defendant JAPAN AIRLINES INTERNATIONAL COMPANY, LTD. with the Office of the Clerk of the United States District Court for the Southern District of New York.

Dated: New York, New York
October 31, 2007

CLYDE & CO US LLP

By: 
Andrew J. Harakas (AH 3515)

The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 710-3900

Attorneys for Defendant
JAPAN AIRLINES INTERNATIONAL
COMPANY, LTD.

To: Alfred J. Will, Esq.
Badiak & Will, LLP
106 Third Street
Mineola, New York 11501-4404
(516) 877-2225

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Mariana Nannarone, being duly sworn, deposes and says that deponent is not a party of this action, is over 18 years of age and resides in Brooklyn, New York. On October 31, 2007 deponent served the within **NOTICE OF REMOVAL** upon:

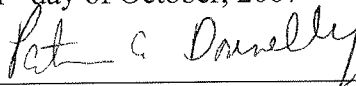
Alfred J. Will, Esq.
Badiak & Will, LLP
106 Third Street
Mineola, New York 11501-4404
(516) 877-2225

The address(es) designated by said attorney(s) for that purpose by depositing a true copy thereof enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



Mariana Nannarone

Sworn to before me this
31st day of October, 2007



Notary Public

PATRICIA A. DONNELLY
Notary Public, State of New York
No. 01DO5087441
Qualified in New York County
Commission Expires Nov. 30, 2009